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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944

No. 1147

MARJORIE HAIR BURTON, individually and as
administratrix of the estate of Frederic A. Burton,
deceased,

Petitioner,

vs.

FREEMAN COAL MINING CORPORATION, a corpo-
ration, WILLIAM J. KRUGLY and MATERIAL
SERVICE CORPORATION, a corporation,

Respondents.

BRIEF IN SUPPORT OF PETITION

JOHN J. DOWDLE,

Attorney for Petitioner.

CHARLES H. BORDEN,
Of Counsel.



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SUMMARY OF ARGUMENT

Under Chapter X of the Bankruptcy Act the Bankruptcy Court is given exclusive jurisdiction of the debtor and its property wherever located.

The Trustee of a debtor estate upon his appointment and qualification is vested by operation of law with title of the debtor and its property wherever located, and suits to recover assets of a debtor in reorganization proceedings must be brought by the Trustee.

Respondents brought this suit individually and not as assignees of the trustee of the debtor Burton Coal Company. The suit was instituted after a plan of reorganization of the debtor Burton Coal Company had been confirmed and consummated. The plan made no provision for the enforcement of claims belonging to the debtor, yet the suit is based upon the cause of action which it is alleged existed in favor of the debtor Burton Coal Company.

The Supreme Court of Illinois in affirming a decree of the Circuit Court of Cook County, Illinois, determined that the State court had jurisdiction of the debtor Burton Coal Company and its property after a conclusive determination by the Bankruptcy Court that the debtor Burton Coal Company and its property were under its exclusive jurisdiction.

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OPINIONS BELOW.

The opinion of the Supreme Court of Illinois filed No-
vember 22, 1944, appears at R. 314.

Upon denial of the petition for rehearing the Supreme
Court of Illinois modified its original opinion by deleting
therefrom a reference to J. Roy Browning, the Trustee,
as follows: "His appointment as President of the Cor-
poration formed to take over the assets of the debtor
estates under these circumstances is difficult to under-
stand. In any event" (R. 323).

The modified opinion, filed January 15, 1945, appears
at R. 342 and is officially reported in 388 Ill. 604.

JURISDICTION.

A statement as to jurisdiction appears in the petition, pages 5-8.

STATEMENT OF THE CASE.

A summary statement of the facts is given in the petition, pages 2-5.

STATUTES INVOLVED.

The constitutional provisions and the statutes involved are set forth in an appendix attached to the petition.

ARGUMENT.

Chapter X of the Bankruptcy Act under which the reorganization of the Burton Coal Company was accomplished, expressly confers upon the United States District Court "exclusive jurisdiction of the debtor and its property wherever located." Bankruptcy Act, Chapter X, Sec. 111.

The Congress in the reorganization provisions of the Bankruptcy Act, exercising its paramount bankruptcy power, has provided in Section 149 that an order which has become final, approving a petition filed under this Chapter, shall be a conclusive determination of the jurisdiction of the Court. Constitution of the United States, Article I, Sec. 8, Clause 4. Judicial Code, Section 256, *Gross v. Irving Trust Company*, 289 U. S. 342; *Isaacs v. Hobbs Tie & Timber Co.*, 282 U. S. 734.

J. Roy Browning was appointed Trustee of the debtor Burton Coal Company in September 1938 and upon his qualification as such Trustee became vested by operation of law with title to the debtor Burton Coal Company and its property. Bankruptcy Act, Sec. 70, a. The Trustee J. Roy Browning accordingly was the only party plaintiff who might, under the direction of the Bankruptcy Court, lawfully institute and prosecute a suit on behalf of the debtor Burton Coal Company. *Glenny v. Langdon*, 98 U. S. 20, 25; *Trimble v. Woodhead*, 102 U. S. 647.

Respondents in their individual capacity and not as assignees of a Bankruptcy Trustee brought this suit against petitioner, claiming that they succeeded to the rights of the debtor Burton Coal Company, its stockholders and creditors, all of whom it is alleged were aggrieved by

the conduct of petitioner (Fred A. Burton) while President of the Burton Coal Company in the period prior to the institution of the proceedings for the reorganization of said Burton Coal Company. In contemplation of the confirmation and consummation of the plan of reorganization of the Burton Coal Company under Chapter X of the Bankruptcy Act such succession is impossible and its assertion ridiculous. Section 216(13) Bankruptcy Act. The confusion that would result if creditors or stockholders of a debtor in reorganization were permitted to bring independent suits in their own behalf is considered in the case of *Gochenour, et al. v. George & Francis Ball Foundation, et al.*; 35 Fed. Supp. 508, 517, affirmed 117 F. 2nd 260—cert. den. 313 U. S. 566. In that case an independent class action was brought by plaintiffs in their individual capacity on behalf of all the creditors of a bankrupt corporation, alleging that the defendants and officers and directors of the bankrupt corporation entered into a conspiracy which resulted in a loss to the creditors of the bankrupt. The Court, in sustaining a motion to dismiss the suit, says at page 517:

“It is inconceivable that this court has authority to review the finding of the bankruptcy court as to the classification of creditors, yet, that would be the effect if these plaintiffs were permitted to maintain this action, recover judgment, realize upon such judgment and this court make distribution among the special class, as prayed. This would lead to endless confusion, and such proceedings were never contemplated by the Bankruptcy Act. To avoid such confusion, the bankruptcy court is given exclusive jurisdiction over all its assets wherever found, and to make distribution thereof as it directs.”

The respondents in this case go beyond what was attempted by the plaintiffs in the *Gochenour* case, *supra*. This was not a class action and in this case suit was

instituted after the plan of reorganization of the Burton Coal Company had been confirmed by the Judge of the Bankruptcy Court and the rights of the debtor Burton Coal Company, its creditors and stockholders had been determined. The plan is *res judicata*. Bankruptcy Act, Sec. 224.

We will address ourselves solely to a consideration of respondent,* Freeman Coal Mining Corporation, the corporation organized for the purpose of acquiring property and issuing securities under the plan (R. 61, 62), and the rationale of the Supreme Court of Illinois in arriving at its conclusion "that a trust should be impressed upon the (petitioner's) property in favor of the (debtor) Burton Coal Company, which, in turn should be deemed to have conveyed to the (respondent) Freeman

* It is stated in a note, at page 3 of the petition, that respondents William J. Krugly and Material Service Corporation are not necessary for a consideration of petitioner's application. The basis for this statement is that the master in chancery who heard this cause found that respondents William J. Krugly and Material Service Corporation offered no proof of the allegations relating to them contained in the complaint (R. 51); that they were not necessary parties to the suit and that the respondent Freeman Coal Mining Corporation represented whatever interest they might have in said cause (R. 67).

The Supreme Court of Illinois, however, commenting on the status of William J. Krugly, observes that said Krugly bought the preferred stock of the Burton Coal Company from the Continental Bank and that said Krugly now stands in the shoes of the Continental Bank as a creditor (R. 346). This observation of the Supreme Court of Illinois, and numerous others contained in the opinion of that Court lends emphasis to the wisdom of Congress in conferring upon the courts of bankruptcy exclusive jurisdiction over the bankrupt and its property wherever located and the determination of causes of action available to the estates of debtors.

The Plan provides specifically for the payment of the Continental Bank's claim and recites that said Bank has transferred to Material Service Corporation the securities to which it was entitled by reason of its allowed claim. Appendix B, Article IX, pp. 5, 6, R. 298-299.

Coal Mining Corporation * * * (R. 352, 353) (Parenthesis ours)

On April 1, 1942, the Trustee, J. Roy Browning, transferred to said respondent the property of the debtor Burton Coal Company, and on the same day became President of said respondent corporation (R. 218).

We believe that the confusion manifested in the opinion of the Supreme Court of Illinois is attributable, in large measure, to the misleading and erroneous testimony of J. Roy Browning.

J. Roy Browning signed the verified complaint in this case as President of the respondent Freeman Coal Mining Corporation (R. 214). In the complaint J. Roy Browning, the president of respondent corporation alleges that J. Roy Browning, the Trustee of the debtor, was without knowledge of the matters set forth in the complaint relating to the petitioner Fred A. Burton prior to September, 1938 (R. 11).

Leaving aside consideration of petitioner's stock ownership of the Burton Coal Company prior to the institution of the reorganization proceedings in September 1938, and all other considerations and accepting J. Roy Browning's verified statement as true, then it became the Trustee Browning's duty to report to the Bankruptcy Court that a chose in action was available to the estate of the Burton Coal Company. Bankruptcy Act, Section 167.

Under the unbroken sequence of decisions of this Court the administration of such an asset and its distribution is required to be made in accordance with the provisions of the Bankruptcy Act and under the direction of the Bankruptcy Court and not in accordance with notions in respect of its administration and distribution which a State court may entertain.

This Court, in the case of *Prudence Realization Corp. v. Geist*, 316 U. S. 89, 95, says:

"The bankruptcy act prescribes its own criteria for distribution to creditors. In the interpretation and application of federal statutes, federal not local law applies. (Citing cases.) The court of bankruptcy is a court of equity to which the judicial administration of the bankrupt's estate is committed * * *."

This court in the case of *Ecker v. Western Pac. R. Corp.*, 318 U. S. 451, at page 482, cited with approval a quotation from the opinion of the Court written by Mr. Justice Douglas in the case of *Consolidated Rock Co. v. DuBois*, 312 U. S. 510: "Absent the requisite valuation data, the Court was in no position to exercise the 'informed, independent judgment' (*National Surety Co. v. Coriell*, 289 U. S. 426, 436) which appraisal of the fairness of a plan of reorganization entails * * *."

In that case the Court said:

"In the first place, there must be a determination of what assets are subject to the payment of the respective claims."

Illumined by the decisions of this court, can it be said that a corporation organized to acquire property of a debtor corporation under a plan may lawfully institute a suit based upon a chose in action of which the court approving and confirming the plan was not aware?

Mr. Browning, as Trustee, knew that it was necessary for the respondent corporation of which he was president to show authority from the Bankruptcy Court whereby the alleged cause of action against petitioner was transferred to it. Mr. Browning accommodates by testifying that a bill of sale was approved by the Bankruptcy Court as part of the plan of reorganization of the Burton Coal Company; that the Bankruptcy Court approved the plan

of reorganization and amended the plan of consummation; that the bill of sale contained "practically the same condition as Paragraph 12 (R. 9) of the complaint (R. 217). The purported orders of the Bankruptcy Court approving the alleged bill of sale or "amending the plan of consummation" are not in this record and may be presumed to be adverse to the testimony of Mr. Browning. The simple fact is the alleged orders are non-existent.

Upon this testimony of Mr. Browning and the alleged bill of sale which he produced the Master in Chancery found that the purported order of the Bankruptcy Court approving the plan of reorganization of the Burton Coal Co. directed the Trustee to sell all rights which the Trustee " * * * might have asserted against any person by reason of any property held by such person in trust for the several debtors * * *" (R. 51). The order approving the plan of reorganization is not in evidence in this case, and how the Master can quote at length from it is incomprehensible. This court will take judicial notice of the fact that an order approving a plan does not direct the trustee to sell anything not included or dealt with by the plan. The Supreme Court of Illinois misled by this erroneous and baseless finding of the Master amplifies upon it and says (R. 350):

"Initially it is to be observed that the present action is incidental to a conveyance by a trustee, under the direction of a Federal Court in proceedings under the Bankruptcy Act."

The Supreme Court of Illinois then conjures up the reason for the alleged conveyance and says:

"The order of the Federal Court, in turn, has for its basis, among other things, fraud on the part of the Burton Coal Company and of Burton himself, * * *" (R. 350).

The questions raised in this case are an integral part of the administration of a Chapter X proceeding and it is respectfully submitted that the present appeal furnishes an appropriate occasion for the granting of certiorari. See *Emil v. Hanley*, cert. granted 317 U. S. 621, L. Ed. 643; *Fidelity Assurance Asso. v. Sims*, cert. granted 317 U. S. 614; *Gross v. Irving Trust Co.*, cert. granted 288 U. S. 598; *Prudence Realization Corp. v. Geist*, cert. granted 314 U. S. 606.

The Supreme Court of Illinois in affirming the decree of the Circuit Court of Cook County, Illinois, determined that the State Court had jurisdiction of the debtor Burton Coal Company and its property after a conclusive determination by the Bankruptcy Court that the debtor Burton Coal Company and its property were under its exclusive jurisdiction. Bankruptcy Act, Section 149. Such divided control can lead only to confusion and was never heretofore contemplated by any court. It is opposed to all other decisions on the question.

The question is of importance and should be resolved by this Court.

Respectfully submitted,

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Counsel for Petitioner.

CHARLES H. BORDEN,
Of Counsel.

Dated April 10, 1945.